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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/787,342	02/26/2004	Howard David Hutton III	AA-615M	3969

27752 7590 09/04/2008

THE PROCTER & GAMBLE COMPANY
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EXAMINER	
DOUYON, LORNA M	

ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
09/04/2008	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/787,342	HUTTON ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *16 October 2007 and 06 August 2008*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *2-4 and 11* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *2-4 and 11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *26 February 2004* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 16, 2007 has been entered.

2. This action is also responsive to the petition decision dated August 6, 2008.

3. Claims 2-4 and 11 are pending.

4. Claims 2-4 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 11 is indefinite in the recital of "selected from .....and/or" in lines 3-4. The phrase "selected from" should be followed by "and" and not "or". See MPEP 2173,05(h)(I).

The limitation of claim 4 is already recited in independent claim 11, to which this claim is dependent upon. It is suggested that this claim be cancelled.

Claims 2-3, being dependent upon claim 11, are rejected as well.

Claim Rejections - 35 USC § 103

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. Claims 2-4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petri et al. (US Patent No. 6,114,298), hereinafter "Petri".

Petri teaches a microemulsion suitable for disinfecting a surface (see col. 2, lines 48-49), such as dishes (see col. 14, line 59), comprising a surfactant, an aqueous phase comprising a bleach, and droplets dispersed in said aqueous phase, said droplets comprising an essential oil or an active thereof (see abstract; col. 2, lines 48-53). The aqueous phase of the microemulsions comprises at least water (see col. 8, lines 58-63) and may comprise as a preferred optional ingredient, a hydroxylated solvent (se col. 9, lines 51-53), such as glycol ethers (see col. 10, lines 1-25) and aliphatic alcohols such as ethanol (see col. 10, lines 45-53). The microemulsions may comprise as an optional ingredient, other solvents including terpene (see col. 11, lines 1-13), which terpene read on the "low water-soluble oil having a solubility in water of less than about 5000 ppm as required in independent claim 11. The microemulsion may further comprise a variety of other optional ingredients such as enzymes (see col. 11, lines 19-24). The microemulsions may be packaged in a variety of suitable detergent packaging known to those skilled in the art, for example, spray dispenser, preferably in a trigger spray dispenser or in a pump spray dispenser, and may include manually operated foam trigger-type dispensers (see col. 16, lines 23-44). The

microemulsion may also be executed in the form of wipes (see col. 16, lines 60-64). Petri, however, fails to specifically disclose a foam trigger-type dispenser comprising a microemulsion which comprises a surfactant, water, ethanol, glycol ether, terpene and enzymes; and the foam to weight ratio as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare a microemulsion, packaged in a foam trigger-type dispenser, comprising optimum proportions of a surfactant, water, ethanol, glycol ether, terpene and enzymes because Petri teaches the combination of these ingredients for effectively disinfecting surfaces such as dishes, and to reasonably expect the foam trigger-type dispenser to generate a foam having a foam to weight ratio as those recited because similar ingredients and similar foam-generating dispensers have been utilized.

7. Claims 2-4 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Petri et al. (US Patent No. 6,114,298), hereinafter "Petri" in view of Pritchett et al. (US Patent No. 6,612,468), hereinafter "Pritchett".

Petri teaches the features as described above. Petri, however, fails to specifically disclose a foam generating dispenser comprising a gas imparting mechanism selected from an air injection piston, foam-generating aperture, a mesh or net, a pump and sprayer, and the foam to weight ratio as those recited.

Pritchett teaches a hand operated non-aerosol foam dispenser comprising a combined liquid pump and air pump for mounting at the top of a container of foamable liquid, the liquid pump having a liquid cylinder and a liquid piston defining between them

a liquid chamber, the air pump having an air cylinder and an air piston defining between them an air chamber, and the liquid piston and air piston being reciprocable together in their respective cylinders by the action of a pump plunger which carries said pistons; an air inlet valve and liquid inlet valve being provided for the air chamber and liquid chamber respectively; an air discharge passage and a liquid discharge passage leading from the air chamber and the liquid chamber respectively, the air discharge passage and liquid discharge passage meeting one another for mixing the pumped air and liquid which passes to an outlet passage of the dispenser by way of a permeable foam regulation element; one or more vent openings being provided to admit air into a cap chamber and into the air chamber through the air inlet valve (see abstract; claims). The preferred foam-generating element uses one or more layers of mesh to produce a uniform foam for discharge (see col. 3, lines 40-46).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to package the microemulsion of Petri in the non-aerosol foam dispenser of Pritchett because Petri teaches in col. 6, lines 23-44 that the microemulsions may be packaged in a variety of suitable detergent packaging known to those skilled in the art, and Pritchett teaches such dispenser, and to reasonably expect the foam to weight ratio to be within those recited because similar ingredients and dispensers have been utilized.

Double Patenting

8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the

unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 2-4 and 11 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 8 and 9 of U.S. Patent No. **7,402,554** in view of Petri.

US '554 teaches a similar cleaning kit except for the presence of ethanol, glycol ethers and low-water soluble oil.

Petri teaches the features as described above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate ethanol, glycol ethers and low water soluble oil like terpene into the composition of US '554 because such incorporation would assist/promote the formation of the microemulsion, and contribute to the cleaning performance as taught by Petri in col. 9, lines 54-55 and col. 11, lines 11-13.

10. Claims 2-4 and 11 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 5, 6, 11 and 12 of copending Application No. **10/787,266** , **or** claims 1, 5, 6, 11 and 12 of copending Application No. **10/787,343** in view of Petri.

Each of the copending applications above teaches a similar cleaning kit except for the presence of ethanol, glycol ethers and low-water soluble oil.

Petri teaches the features as described above.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate ethanol, glycol ethers and low water soluble oil like terpene into the composition of each of the above copending applications because such incorporation would assist/promote the formation of the microemulsion, and contribute to the cleaning performance as taught by Petri in col. 9, lines 54-55 and col. 11, lines 11-13.

This is a provisional obviousness-type double patenting rejection.

Response to Arguments

11. Applicants' arguments filed October 16, 2007 have been fully considered but they are not persuasive.

With respect to the rejection based upon Petri et al. Applicants argue that Petri et al. does not teach or suggest a container comprising a foam-generating dispenser for generating a foam comprising a gas imparting mechanism to form the foam selected

from an air injection piston, foam-generating aperture, a mesh or net, a pump, and/or a sprayer which injects or imparts air from the atmosphere into the dishwashing composition:

The Examiner respectfully disagrees with the above argument because it is clear from Petri in col. 16, lines 23-44 that Petri teaches manually operated foam trigger-type dispenser which, at least, comprises a sprayer, hence, reading on one of the selection of gas imparting mechanisms recited in claim 11.

With respect to the provisional obviousness-type double patenting rejection over copending application No. **10/787,266** and **10/787,343**, Applicants state that when a patentable subject matter is identified, a terminal disclaimer will be submitted.

The provisional obviousness-type double patenting rejections above are maintained until such time Applicants submit a timely terminal disclaimer.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Lorna M Douyon/
Primary Examiner, Art Unit 1796